

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** December 4, 2007

Agenda Item No. 8(R)(1)(C)

**To:** Honorable Chairman Bruno A. Barreiro and  
Members, Board of County Commissioners

**From:** George M. Burgess  
County Manager

**Subject:** Execution of a Settlement Agreement for Contract No. E98-DERM-01: WASD-NLE WEST, MDWASD Contract No. S-785 between Nova Consulting, Inc. and Miami-Dade County

## **RECOMMENDATION**

The Miami-Dade Water and Sewer Department (MDWASD) is conducting an internal review of its construction contracts and preparing change orders or settlement agreements as required with the intent of resolving all outstanding construction issues. Furthermore, new policies and procedures are being implemented department-wide to reduce the risk of future change orders and settlement agreements.

It is recommended that the Board of County Commissioners (Board) approve the attached settlement agreement in the amount of \$798,230.26 between Nova Consulting, Inc. (NOVA) and Miami-Dade County. NOVA and Miami-Dade County through MDWASD is looking to settle claims for the above referenced contract. The settlement amount of \$798,230.26 is approximately 13.64% above the original contract amount. The settlement also includes a time extension of 333 days.

## **BACKGROUND**

On June 30, 2003, the Department of Environmental Resources Management (DERM) issued a work order to NOVA for the WASD-NLE WEST project in the amount of \$5,850,862 with a total contract time of 448 days. The scope of work required NOVA to supply all design and permitting and to construct approximately 9,100 linear feet of 54-inch sewer force main along the south side of Opa-Locka Airport, west of NW 57 Avenue, east to NW 42 Avenue in Miami, Florida.

This project, WASD-NLE WEST is related to another project, WASD-NLE EAST, wherein 8,300 linear feet of 54-inch sewer force main was installed along the south side of the Opa-Locka Airport, east of NW 42 Avenue, east to NW 37 Avenue connecting to project WASD-NLE WEST at NW 42 Avenue. Both projects were certified and placed in service on August 19, 2005, at which time sewage began flowing through both sewer force mains.

Numerous project delays took place under WASD-NLE WEST which accounts for the time extension of 333 days. Furthermore, NOVA alleges they incurred additional costs attributable to these delays which they contend were beyond their control such as costs associated with idle equipment and the escalating prices of materials. After NOVA presented a claim against the County in the amount of \$1,739,636, MDWASD staff entered into negotiations with NOVA resulting in a time extension of 333 days and a settlement of \$798,230.26 for the delays and the change in the scope of work performed.

Honorable Chairman Bruno A. Barreiro and Members,  
Board of County Commissioners  
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The County believes that this settlement is fair and reasonable and reflects payment of actual costs incurred by NOVA. The County Attorney's Office has reviewed this settlement agreement and concurs with this action.



Assistant County Manager

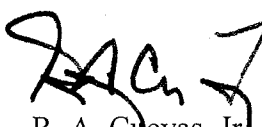


# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** December 4, 2007

**FROM:**   
R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 8(R)(1)(C)

Please note any items checked.

- ☐ "4-Day Rule" ("3-Day Rule" for committees) applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Bid waiver requiring County Manager's written recommendation
- ☐ Ordinance creating a new board requires detailed County Manager's report for public hearing
- ☒ Housekeeping item (no policy decision required)
- ☐ No committee review

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 8(R)(1)(c)

12-04-07

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING SETTLEMENT  
AGREEMENT BETWEEN NOVA CONSULTING,  
INC. AND MIAMI-DADE COUNTY IN THE AMOUNT  
OF \$798,230.26 RELATING TO DESIGN AND  
INSTALLATION OF 54-INCH SEWER FORCE MAIN  
AT OPA-LOCKA AIRPORT

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the settlement agreement between Nova Consulting, Inc. and Miami-Dade County in the amount of \$798,230.26 relating to the design and installation of a 54-inch sewer force main at Opa-Locka Airport, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner ,  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman	
Barbara J. Jordan, Vice-Chairwoman	
Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this  
4<sup>th</sup> day of December, 2007. This resolution shall become effective ten (10) days after  
the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become  
effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as  
to form and legal sufficiency.

Henry N. Gillman

By: \_\_\_\_\_  
Deputy Clerk

**SETTLEMENT AGREEMENT BETWEEN**

**NOVA CONSULTING, INC.**

**AND**

**MIAMI-DADE COUNTY**

This Settlement Agreement is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between Miami-Dade County ("the County") and Nova Consulting, Inc. ("Nova").

WHEREAS, the County and Nova are party to a contract known as E-98-DERM01-WASD-NLE WEST ("the Contract"); and

WHEREAS, the County issued a work order under the contract requiring NOVA to supply all design, permitting, installation and start-up services and activities to construct and put in service approximately 9,100 linear feet of a 54-inch sewer force main along the south side of Opa-Locka Airport, west of NW 57<sup>th</sup> Avenue, east to NW 42<sup>nd</sup> Avenue ; and

WHEREAS, Nova contends that it incurred additional costs due to delays beyond its control; and

WHEREAS, the County and Nova desire to completely resolve and settle all issues which were, or could have been, raised on account of the services, labor and materials provided, and work done, and all damages or costs of any nature incurred, including both direct and indirect by Nova and its subcontractors, suppliers, and material suppliers for the design, permitting, installation and start-up services of the 54-inch sewer force main as fully set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Nova and the County agree as follows:

1. Within twenty-one (21) days from the effective date of this settlement agreement and subject to the receipt of all documentation required by the contract including, but not limited to, certified payrolls, releases of lien, as-builts, atlases and contractor affidavits, the County shall pay to Nova the amount of \$798,230.26 ("settlement payment"); such settlement payment shall be final payment for the contract work relating to the design, permitting, installation and start-up services of the 54-inch sewer force main.

2. Payment of said sum of \$798,230.26 shall constitute full satisfaction of any and all claims of which Nova or any of its subcontractors or material suppliers had knowledge of or reasonably should have had knowledge of in connection with any of the work performed or damages or cost incurred in connection with the contract or the services and construction, including both direct, indirect and pass-through claims, damages, actions and causes of action.

3. Nothing in this settlement agreement constitutes an admission by any party of any wrongdoing or liability of any kind.

4. In consideration of the mutual covenants contained in this settlement agreement, Nova hereby releases, discharges and acquits the County and its officials, employees and agents from and against, and also waives and relinquishes any and all rights to, all claims, direct and indirect costs, damages, liability, interest, disputes or causes of action of whatever nature or kind it has or may have, whether known or unknown, against the County and its officials, employees and agents arising out of or relating to the settlement payment, contract, work or project for the design, permitting, installation and start-up services of the 54-inch sewer force main.

5. The County hereby releases, discharges, and acquits Nova, its subcontractors and material suppliers from any and all liquidated damages and other damages or costs arising out of or related to delays in connection with the design, permitting, installation and start-up services of the 54-inch sewer force main. The County does not waive any claims it may have against Nova as a result of latent defects in the work.

6. In consideration of the payment by the County to Nova of the settlement payment, Nova shall defend, hold harmless, and indemnify the County and its officials, employees, agents and representatives, from any and all claims, liability, losses or damages, direct or indirect, including without limitation attorney's fees and costs of defense, arising out of or related to work performed under the contract, of which Nova or any of its subcontractors or material suppliers had knowledge or reasonably should have had knowledge. Nova shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon.

7. This settlement agreement is complete and contains the full understanding of Nova and the County. This agreement may not be modified without the express written consent of Nova and the County. This agreement supersedes all other terms, provisions, or specifications of any prior documentation or agreement as may exist between Nova and the County.



8. This settlement agreement shall be interpreted under Florida law. Venue for any litigation relating to this Agreement shall be had in Miami-Dade County, Florida.

9. This settlement agreement, and each and every provision herein, shall be subject to the express approval of the Miami-Dade County Board of County Commissioners. This agreement becomes effective eleven (11) days after approval by the Miami-Dade County Board of County Commissioners, unless vetoed by the Mayor. In the event the Mayor vetoes the Commission action, the Commission action shall not be effective in the absence of an override of the Mayor's veto at the next regularly scheduled meeting of the Board after the veto occurs. The actions of the Commission and the Mayor in connection with the approval or rejection of this agreement rests within their sole discretion.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement on the day and year first above written.

Witnesses:

**NOVA CONSULTING, INC.**

\_\_\_\_\_  
\_\_\_\_\_

By:

Maria J. Molina

Print Name:

Maria J. Molina

Title:

President

Attest:

Harvey Ruvin, Clerk

**MIAMI-DADE COUNTY**

By Its Board of County Commissioners

By:

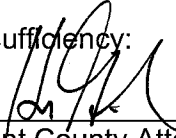
\_\_\_\_\_  
Deputy Clerk

By:

\_\_\_\_\_  
County Mayor

Approved as to form and

Legal sufficiency:

  
Assistant County Attorney